

**FILED**

**JANUARY 11, 2008**

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

**08 C 255**

MARY THERESA CAHILL, )  
)  
Plaintiff, )  
)  
vs. ) No.  
)  
SMITH AND NEPHEW, INC., )  
)  
Defendant. )

**NOTICE OF REMOVAL**

**JUDGE DARRAH  
MAGISTRATE JUDGE BROWN**

TO: Clerk of the Court  
United States District Court  
Northern District of Illinois  
Eastern Division  
219 S. Dearborn Street  
Chicago, IL 60604

Clerk of the Court  
Circuit Court of Cook County  
County Department - Law Division  
Richard J. Daley Center  
50 W. Washington Street  
Chicago, IL 60602

Eric D. Stubenvoll  
Alika Moitra  
Christenson & Ehret, LLP  
222 W. Adams Street,  
Suite 2100  
Chicago, IL 60606

Defendant Smith and Nephew, Inc. hereby provides its Notice of Removal pursuant to 28 U.S.C.A. § 1441. The grounds for removal are as follows:

1. On December 5, 2007, plaintiff filed suit in the Circuit Court of Cook County, Chicago, Illinois, Law Division, entitled, *Mary Theresa Cahill v. Smith and Nephew, Inc. a Delaware Corporation*, Case No.07 L 13600 (see copy of plaintiff's

Complaint, attached hereto and made a part hereof as Exhibit "A").

2. Defendant Smith and Nephew, Inc. was served with plaintiff's complaint by personal service on December 18, 2007 (see copy of Summons, attached hereto and made a part hereof as Exhibit "B").

3. Pursuant to 28 U.S.C. § 1446(a) plaintiff's summons and complaint are attached to this Notice of Removal and are the sole pleadings in the aforementioned case, thus constituting the court file, copy of all process, pleadings, and orders served upon defendant.

4. Defendant Smith and Nephew, Inc. has filed this Notice of Removal within thirty (30) days of service of the lawsuit.

5. Defendant Smith and Nephew, Inc. is incorporated in Delaware and has its principal place of business in Memphis, Tennessee.

6. The plaintiff, Mary Theresa Cahill, is a citizen of the State of Illinois.

7. Thus, there is complete diversity of citizenship of the parties pursuant to 28 U.S.C.A. § 1332.

8. The amount in controversy also exceeds \$75,000 exclusive of costs and interest. (see affidavit of Anthony J. Monaco, attached hereto and made a part hereof as Exhibit "C"). In her complaint, Ms. Mary Theresa Cahill alleged that defendant Smith and Nephew, Inc.'s product proximately caused her "pain and suffering," "substantial medical bills," a "loss of normal life", and that she is "unable to carry out her usual and daily activities."

9. The underlying state court is one in which this court has original jurisdiction over pursuant to the provisions of 28 U.S.C.A. § 1332 and is one which may

be removed to this Court by the petitioner pursuant to the provisions of 28 U.S.C.A. § 1441 and § 1446 because the matter in controversy exceeds the sum of \$75,000 exclusive of costs and interests, and complete diversity exists.

10. The defendant has given written notice of the filing of this Notice of Removal to all attorneys of record and the Clerk of the Cook County Circuit Court – Law Division, Chicago, Illinois.

Respectfully Submitted,

By: /s/ Anthony J. Monaco  
One of the attorneys for the  
Defendant  
Smith and Nephew, Inc.

Kay L. Schichtel ARDC# 2480417  
Anthony J. Monaco, ARDC# 6279545  
Swanson, Martin & Bell, LLP  
330 N. Wabash, Suite 3300  
Chicago, IL 60611  
(312) 321-9100  
(312) 321-0990 FAX  
amonaco@smbtrials.com

**CERTIFICATE OF SERVICE**

I, Joan M. Amore, a non-attorney, certify that I served the foregoing **Notice of Removal** upon the clerks and counsel of record listed below from the offices of Swanson, Martin & Bell, LLP, 330 N. Wabash, Suite 3300, Chicago, IL 60611 on January 11, 2008.

**VIA E-MAIL**

Clerk of the United States  
District Court  
Northern District of Illinois  
Eastern Division

**VIA REGULAR MAIL**

Clerk of the Circuit Court  
Cook County, Illinois  
County Department, Law Division

**VIA REGULAR MAIL**

Eric D. Stubenvoll  
Alika Moitra  
Christenson & Ehret, LLP  
222 W. Adams Street, Ste. 2100  
Chicago, IL 60606

/s/ Joan M. Amore

[X] Under penalties of perjury, I certify that the statements set forth herein as true and correct.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

MARY THERESA CAHILL

Plaintiff,

v.

SMITH & NEPHEW, INC.

Defendants.

No. 07 L 13600

2007L013600  
CALENDAR/2007  
TIME 00:00  
PRODUCT LIAISON

JURY DEMAND

**PLAINTIFF'S COMPLAINT AT LAW**

COMES NOW Plaintiff Mary Theresa Cahill, by and through her attorneys, Charles  
& Ehret LLP, and for her complaint against Smith & Nephew, Inc. ("Smith & Nephew") states  
as follows:

**PARTIES & VENUE**

1. Plaintiff, Mary Theresa Cahill, ("Cahill") is an individual residing in Cook County, Illinois.
2. Smith & Nephew is a corporation organized under the laws of Delaware with its principal place of business in Tennessee and doing business in the State of Illinois. Smith & Nephew manufactures orthopedic devices, including replacement hip devices.
3. Venue is proper pursuant to 735 ILCS 5/2-101 in that the events giving rise to this action occurred in Cook County.

**GENERAL ALLEGATIONS**

4. In 1990, Plaintiff Cahill underwent left total hip replacement surgery.
5. On February 11, 2003, Cahill underwent surgery to replace the original artificial hip with an Echelon hip made of cobalt chromium and manufactured by Smith & Nephew,

07 DEC 5 PM 3:59  
CIRCUIT COURT OF COOK  
COUNTY ILLINOIS  
LAW DIVISION  
CLERK  
NORTH BROWN

EXHIBIT

A

Model Nos. 71340413 (Rod) and 71303200 (Ball) (hereinafter referred to as the "Hip Replacement").

6. On December 7, 2006, in the absence of any trauma, Cahill suffered a complete fracture to the femoral stem of her Smith & Nephew echelon hip rod.

7. On December 14, 2006, Plaintiff Cahill was forced to undergo surgery to remove the defective Hip Replacement.

8. On December 19, 2006, Mrs. Cahill underwent a second surgery to implant a new hip replacement.

### **COUNT I**

### **NEGLIGENCE**

9. Plaintiff Cahill incorporates by reference paragraphs 1 through 8 as though fully set forth herein

10. Defendant Smith & Nephew owed a duty to Plaintiff to use reasonable care in the manufacturing and design of the Hip Replacement.

11. Defendant owed duty to Plaintiff to test and inspect for and to warn of defects and dangerous propensities and conditions inherent in and arising from the Hip Replacement.

12. Defendant Smith & Nephew was negligent in the testing, certification, assembly, and manufacturing of the Hip Replacement.

13. Defendant Smith & Nephew committed one or more of the following acts or omissions:

- a. Negligently manufactured, distributed and sold the Hip Replacement that was not of the proper strength, durability and metallurgical integrity;
- b. Failed to adequately test the Hip Replacement to discover that it was defective in composition, structure and/or strength;

- c. Failed to provide adequate safeguards to protect persons such as the Plaintiff;
- d. Failed to warn of said defects even though defendant Smith & Nephew knew or should have known plaintiff Cahill would not realize or appreciate the dangerous conditions arising from the use of the Hip Replacement; and
- e. Was otherwise negligent.

14. As a direct and proximate result of defendant Smith & Nephew's negligence, in addition to surgery to remove the Hip Replacement, Plaintiff required surgery to replace the Hip Replacement, experienced pain and suffering, incurred substantial medical bills, suffered a loss of a normal life, is unable to carry out her usual and daily activities and was otherwise damaged.

WHEREFORE, Plaintiff Mary Theresa Cahill requests this Court enter judgment against defendant Smith & Nephew, Inc. in an amount greater than \$50,000.00 and for such other relief as this Court deems just and proper.

## **COUNT II**

### **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

15. Plaintiff Cahill incorporates by reference paragraphs 1 through 8 as though fully set forth herein

16. Defendant Smith & Nephew was a merchant of the Hip Replacement.

17. At all times relevant Plaintiff Cahill was a person reasonably expected to be effected by the use and operation of the Hip Replacement.

18. Defendant Smith & Nephew breached the implied warranty of merchantability in that the Hip Replacement sheared in two pieces and was not fit for the ordinary purpose and was not of merchantable kind and quality in that the Hip Replacement was substandard and subject to breakage.

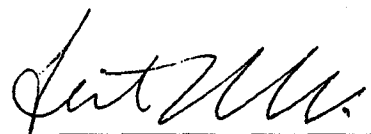
19. Plaintiff Cahill provided notice of the breach of implied warranty of merchantability to defendant Smith & Nephew pursuant to 810 ILCS 5/2-607 (3).

20. As a direct and proximate result of defendant Smith & Nephew's negligence, in addition to surgery to remove the Hip Replacement, Plaintiff required surgery to replace the Hip Replacement, experienced pain and suffering, incurred substantial medical bills, suffered a loss of a normal life, is unable to carry out her usual and daily activities and was otherwise damaged.

WHEREFORE, Plaintiff Mary Theresa Cahill requests this Court enter judgment against Defendant Smith & Nephew in an amount greater than \$50,000.00 and for such other relief as this Court deems just and proper.

Respectfully submitted,

CHRISTENSEN & EHRET, LLP

By:   
One of the attorneys for,  
Mary Theresa Cahill

Eric D. Stubenvoll  
Alika Moitra  
Christensen & Ehret, LLP  
222 West Adams Street, Suite 2170  
Chicago, Illinois 60606  
(312) 634-1014  
(312) 634-1018 Fax  
Attorney No. 31639  
115640





**CT CORPORATION**  
A WoltersKluwer Company

**Service of Process  
Transmittal**

12/18/2007

CT Log Number 512896499



**TO:** JEAN MERCER  
Smith & Nephew, Inc.  
1450 East Brooks Road  
Memphis, TN 38116

Smith & Nephew, Inc.  
Legal Department - Litigation Group

DEC 20 2007

**RE:** Process Served in Illinois

**FOR:** Smith & Nephew, Inc. (Domestic State: DE)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** Mary Theresa Cahill, Ptf. vs. Smith & Nephew, Inc., Dfts.  
**DOCUMENT(S) SERVED:** Summons (2 Sets), Complaint, Affidavit(s)  
**COURT/AGENCY:** Cook County Circuit Court - First Municipal District, IL  
Case # 2007L013600  
**NATURE OF ACTION:** Product Liability Litigation - Manufacturing Defect - Echelon hip made of Cobalt  
Chromium  
**ON WHOM PROCESS WAS SERVED:** C T Corporation System, Chicago, IL  
**DATE AND HOUR OF SERVICE:** By Process Server on 12/18/2007 at 12:00  
**APPEARANCE OR ANSWER DUE:** Within 30 days, not counting the day of service  
**ATTORNEY(S) / SENDER(S):** Mary Thersea Cahill  
Christensen & Ehret, LLP  
222 West Adams Street  
Suite 2170  
Chicago, IL 60606  
312-634-1014  
**ACTION ITEMS:** SOP Papers with Transmittal, via Fed Ex 2 Day , 798833783935  
**SIGNED:** C T Corporation System  
**PER:** Tawana Carter  
**ADDRESS:** 208 South LaSalle Street  
Suite 814  
Chicago, IL 60604  
**TELEPHONE:** 312-345-4336

Page 1 of 1 / PJ

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**EXHIBIT**

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

MARY THERESA CAHILL

Plaintiff,

v.

( SMITH & NEPHEW, INC. )

Defendants.

No.

Please Serve: 0007101380  
CALENDAR  
TIME 00:00  
Product L

Registered Agent:  
CT Corporation System  
208 SO LaSalle St.  
Suite 814  
Chicago, IL 60604

SUMMONS

To each defendant:

You are summoned and required to file an answer to the complaint in this case, a copy of which is hereby attached, or otherwise file an appearance, in the office of the Clerk of this Court (located in the Richard J. Daley Center, Room 802, Chicago, Illinois 60602) within 30 days after service of this summons, not counting the day of service. IF YOU FAIL TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE RELIEF ASKED IN THE COMPLAINT.

To the officer:

This summons must be returned by the officer or other person to whom it was given for service, with endorsement of service and fees, if any, immediately after service. If service cannot be made, this summons shall be returned so endorsed. This summons may not be served later than 30 days after its date.

Witness, DEC 05 2007, 2007

\_\_\_\_\_  
Clerk of Court

Date of service: \_\_\_\_\_, 2007

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF ILLINOIS



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

MARY THERESA CAHILL, )  
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Plaintiff, )  
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vs. ) No.  
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SMITH AND NEPHEW, INC., )  
 )  
Defendant. )

**AFFIDAVIT OF ATTORNEY ANTHONY J. MONACO**

I, Anthony J. Monaco, after being sworn and upon oath, state that if I were called to an evidentiary hearing I would competently testify on the basis of first hand knowledge to the following:

1. I am an attorney for Smith and Nephew, Inc., in the *Cahill* litigation.
2. I am knowledgeable about the citizenship and principal place of business of Smith & Nephew, Inc. is a Delaware corporation with its principal place of business in Memphis, Tennessee.
3. In the time that I have worked as an attorney in Illinois, I have been involved with numerous products liability suits such as this one.
4. As a trial attorney for the above defendant Smith and Nephew, I have a good faith belief, based on the plaintiff's complaint, and my experience in handling numerous product liability actions, that the parties are in diversity, the amount in controversy exceeds the jurisdictional amount of \$75,000 exclusive of costs and interest and removal is proper.



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

MARY THERESA CAHILL,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No.
	)	
SMITH AND NEPHEW, INC.,	)	
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Defendant.	)	

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2. I am knowledgeable about the citizenship and principal place of business of Smith & Nephew, Inc. is a Delaware corporation with its principal place of business in Memphis, Tennessee.
3. In the time that I have worked as an attorney in Illinois, I have been involved with numerous products liability suits such as this one.
4. As a trial attorney for the above defendant Smith and Nephew, I have a good faith belief, based on the plaintiff's complaint, and my experience in handling numerous product liability actions, that the parties are in diversity, the amount in controversy exceeds the jurisdictional amount of \$75,000 exclusive of costs and interest and removal is proper.

FURTHER AFFIANT SAYETH NOT

/s/ Anthony J. Monaco

Subscribed and sworn to  
before me this 11<sup>th</sup> day  
of January, 2008

Joan M Amore  
Notary Public

